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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,515	02/15/2002	Edward A. Ruehle	706011US1	3350

7590

07/22/2003

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EXAMINER

GREENE, JASON M

ART UNIT

PAPER NUMBER

1724

3

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/077,515

Applicant(s)

RUEHLE, EDWARD A.

Examiner

Jason M. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, and 4 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claims***

2. With regard to claim 4, it appears as though Applicants have inadvertently recited the constants used to define the top cover in the recitation of the equation defining the bottom plate. The Examiner notes that the current claim language recites the two equations having the same constants. Therefore, the Examiner suggests Applicants amend claim 4 to recite the correct constants (as disclosed on page 9 of the specification) for defining the bottom plate.

***Claim Rejections - 35 USC § 112***

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term " approximated " in claim 4 is a relative term which renders the claim indefinite. The term " approximated " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The indefinite term renders the contours of the bottom plate and top cover indefinite because it is not clear how precisely the recited equations are intended to represent the contours. While the recited equations can be used to produce a pair of lines, it is not clear how precisely the pair of lines are intended to correlate to the actual contours of the bottom plate and top cover.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonell.

With regard to claim 1, Bonell discloses an air cleaner housing (11) for holding a cylindrical filter element (20) and providing a laminar flow of air to a carburetor of a vehicle engine comprising a bottom plate (12) having an outer peripheral portion (14), a top cover (13) spaced above said bottom plate, said top cover having a top peripheral portion (16) above the outer peripheral portion of the bottom plate, said bottom plate, top cover, and the cylindrical filter element defining a chamber for filtered air entering said chamber through the cylindrical filter element, said bottom plate having a convex section (not numbered, section immediately adjacent the filter element) radially inward of said outer peripheral portion, a bottom venturi section (not numbered, section adjacent the convex section) radially inward of said convex section, and an annular wall (not numbered, radially innermost section of the bottom plate) radially inward from said planar section and extending away from said top cover, said top cover having a convex section radially inward of said top peripheral portion, a concave section radially inward of said convex section, and a planar section radially inward of said concave section, where convex section is at least partially positioned over the bottom venturi section of said bottom plate in Fig. 1 and col. 2, lines 21-64.

With regard to claim 3, Bonell discloses the top cover additionally comprising a depression radially inward of said convex section, and said depression being positioned over an outlet defined by said annular wall of said bottom plate in Fig. 1 and col. 2, lines 21-64.

***Allowable Subject Matter***

6. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

8. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claim 2, the prior art made of record does not teach or fairly suggest the air cleaner housing of claim 1 wherein said bottom plate further comprises a concave section transitioning from said convex section to said bottom venturi section.

With regard to claim 4, Bonell discloses an air cleaner housing (11) for holding a cylindrical filter element (20) and providing a laminar flow of air to a carburetor of a vehicle engine comprising a bottom plate (12) having an outer peripheral portion (14), a top cover (13) spaced above said bottom plate, said top cover having a top peripheral portion (16) above the outer peripheral portion of the bottom plate, said bottom plate, top cover, and the cylindrical filter element defining a chamber for filtered air entering

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said chamber through the cylindrical filter element, said bottom plate having a contour extending radially inward from said outer peripheral portion, and said top cover having a contour extending radially inward from said top peripheral portion.

The prior art made of record does not teach or fairly suggest the contour of the bottom plate being defined by the recited first equation (using the correct constants, as disclosed on page 9 of the specification) or the contour of the top cover being defined by the recited second equation.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gayda, Cook et al., Albertson et al., Ostergaard, Jordan, McHattie et al., Pittsley, Konishi et al., Maddocks, and King references disclose similar air cleaner housings.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (703) 308-6240. The examiner can normally be reached on Tuesday - Friday (7:00 AM to 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (703) 308-1261. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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872-9310 for regular communications and (703) 872-9311 for After Final communications.

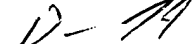
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jason M. Greene  
Examiner  
Art Unit 1724



jmg  
July 15, 2003

DUANE SMITH  
PRIMARY EXAMINER

  
7-17-03